IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH,

AT HYDERABAD

HON'BLE SRI JUSTICE V.V.S. RAO

W.P. No. 19485 OF 2005

Date: 02.09.2005

BETWEEN:

Kamisetti Venkata Krishna Rao

…. PETITIONER

Vs.

1. State Election Commission, State of A.P., rep. by the Election Commissioner, 3rd Floor, Budhabhavan, M.G. Road, Secunderabad. and others.

…. RESPONDENTS

HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No. 19485 OF 2005

ORDER:

The petitioner is a resident of Ward No.8 of Nellore Municipality. According to him, since 1987 his name was entered in the Electoral Roll of the area, and he also exercised his franchise in April 2004 Assembly Elections. To his astonishment he found that his name was not included in the voters list/Electoral Roll on the eve of elections to Nellore Municipal Corporation. Therefore, he made an application in Form No.6 under Rules 13(1) and 26 of the Electoral Registration Rules, 1960 (promulgated under Representation of People Act, 1950). The said Form was submitted on 22.8.2005 duly taking acknowledgement from the second respondent. In the meanwhile the said Election Commission issued a notification under Article 243-K of the Constitution of India on 29.8.2005 prescribing election schedule. The last date for filing nominations is 5.9.2005. As the petitioner wants to contest as a Ward Member, he filed the present writ petition seeking appropriate relief including a direction to the second respondent to consider his application in Form No.6 and pass appropriate orders.

Section 12 of the Hyderabad Municipal Corporation Act, 1955 as applicable to Nellore Municipal Corporation, empowers the authority *inter alia* to include the names in the Electoral Roll of the Assembly Constituencies concerned made by the Electoral Registration Officer under Sections 22 and 23 of Representation of Peoples Act, 1950 (the Act of 1950) up to the date of election notification. The election notification was issued by the first respondent on 29.8.2005 calling upon the voters in Municipal Corporations of Guntur, Kurnool, Warangal, Kadapa, Anantapur, Nellore, Nizamabad, Karimnagar, Kakinada and Eluru to elect members of the Wards thereof. Therefore, the proviso to Section 12 of the Act comes in the way.

The learned counsel for the petitioner however, contends that the petitioner came to know from the provisional Electoral Roll that his name was not included in Ward No.8. Therefore, he made application in Form No.6 immediately on 22.8.2005 to the second respondent, in vain. He would therefore urge that it is incumbent on the part of the second respondent to pass orders immediately in which event there would not be any objection for inclusion of the petitioner's name in the Electoral Roll. The learned counsel for respondents 2 and 3 and the learned Standing Counsel for Municipalities also do not deny this legal position.

The petitioner has made an application in Form No.6 in Ward No.8, much before the publication of the election notification by the first respondent. If at this stage the petitioner is denied the right to participate in the elections, it would be unconstitutional for no fault of the petitioner and for the inaction on the part of the second respondent, the petitioner cannot be denied such right.

Therefore, this writ petition is disposed of after hearing the learned counsel for the petitioner and learned counsel for the contesting respondents, at the admission stage, in the following manner. The second respondent herein is directed to forthwith consider the application in Form No.6 filed by the petitioner on 22.8.2005 and pass appropriate orders immediately by the evening of 3.9.2005. It shall be open to the petitioner to produce necessary material to show that his name was included in the Electoral Roll of Ward No.8 in the earlier elections, in which he has exercised his vote.

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(**V.V.S. RAO, J.)**

2nd September, 2005

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